THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.4040 of 2005

Dated:18 .12.2007

Between:

Sunkara Subba Rao.

..Petitioner.

and

The Commissioner of Endowments, Boghulakunta, Tilak Road, Hydeabad and others.

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.4040 of 2005

–

ORDER:

The petitioner, Sunkara Subba Rao, filed this writ petition praying for a writ of mandamus declaring the action of respondents 2 & 3 in proposing to conduct auction once again for leasing out the land which was already leased out to him being the highest bidder in the auction held on 07.01.2005, as illegal, arbitrary and contrary to the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules, and issue a consequential direction to the respondents to allow him to continue as lessee in respect of the said land, till completion of the lease period, as per the terms and conditions of the auction, dated 07.01.2005.

2. W.V.M.P.No.3078 of 2007 is filed by the 3rd respondent-Sri Ramalingeswara Swamyvari Temple, Nandampudi, Ambajipeta Mandal, East Godavari District, represented by its Single Trustee, K. Narasimha Rao.

3. Heard the counsel on record.

4. It is averred that the 3rd respondent-temple is the owner of dry land of an extent of Ac.2.77 cents in R.S.No.78/5 and an extent of Ac.0.18 cents in R.S.No.79 of Nandampudi village. It had issued auction notice, dated 25.12.2004, inviting bidders for leasing out the above said land for a period of three years commencing from 15.01.2005 to 14.01.2008, fixing the date of auction as 07.01.2005.

The petitioner and others had participated in the said auction held on 07.01.2005 at 10.00 AM and the petitioner became the highest bidder for an amount of Rs.8,450/-per year. As per the terms and conditions of the auction notification, he had participated in the auction by paying Rs.1000/- as EMD and he paid the bid amount of Rs.8,450/- on the very same day and the 3rd respondent had issued a receipt, dated 07.01.2005, acknowledging the receipt of the bid amount. The 3rd respondent had accepted the bid and informed the same to the 2nd respondent on 07.01.2005.

5. Further, it is averred that the petitioner became the highest bidder and paid the entire bid amount and the 3rd respondent had put him in possession of the above said property on 15.01.2005 since lease commences from that date as per auction notice. Since then he had been in possession and enjoyment of the said land. It is stated that the said land is a dry land covered with thorny bushes and he had spent huge amounts to make the said land useful for cultivation.

6. It is also averred that while the matter stood thus, to his utter surprise, petitioner had received notice, dated 17.02.2005, from the 3rd respondent, wherein the 3rd respondent had accepted that he became the highest bidder for Rs.8,450/- and informed that the 2nd respondent had vetoed the auction and therefore, the auction will be conducted once again and directed him not to enter into the land and further informed that he would be permitted to take back the deposited amount as soon as necessary permission is granted. The said auction is impugned in the present writ petition.

7. It is further averred that the 2nd respondent is not conferred with any veto power under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act or Rules

(hereinafter referred to as 'the Act' and 'the Rules' for the purpose of convenience). Rules 7 to 16 of the Rules deals with the lease by way of public auction. Rules 14 and 16 deals with acceptance of bid and approval or disapproval of leases. As per Rule 14, leases shall ordinarily be given to the highest bidder. As per Rule 16 all leases shall be reported to the competent authority and the competent authority may either confirm or for reasons to be recorded in writing disapprove the lease. As per Rule 16(3) of the Rules there is a deeming clause that if no orders are received from the competent authority within 30 days, the lease shall be deemed to have been approved. In the present case, the 2nd respondent is the competent authority and the 3rd respondent reported about the auction and acceptance of bid to the 2nd respondent for approval on 07.01.2005. However, as per the notice dated 17.02.2005, the 2nd respondent vetoed the auction by his order, dated 14.02.2005, i.e., after lapse of 30 days as contemplated in Rule 16(3) of the Rules, therefore, the same is contrary to the Rules. The proceedings, dated 14.02.2005, had not been communicated to the petitioner and he had not given any opportunity before issuing the said notice.

8. It is further averred that the 2nd respondent cannot disapprove the lease without recording any reasons as contemplated under Rule 16 of the Rules, whereas the Notice, dated 17.02.2005, does not disclose any such reasons. It is relevant to mention here that, petitioner reliably came to know that one Mr. G. Satyanarayana, who participated in the auction and could not succeed, instigated the 2nd respondent through his political channels to conduct auction afresh, so that he can take a chance of bidding once again. It is stated that the above referred Rules are very clear that the lease shall ordinarily be given to the

highest bidder and it cannot be disapproved without giving any reasons. As already stated, the petitioner was put in possession of the said property and he had spent huge amount to make the land suitable for cultivation. He filed the affidavits of the neighbours to prove his possession. If he dispossessed and if the respondents allowed to conduct auction afresh, the petitioner will be put to irreparable loss and hardship.

9. In such circumstances, the writ petitioner approached this Court praying for appropriate reliefs.

10. This Court made an interim order of status quo on 07.03.2005 and directed rule nisi on 26.04.2005.

11. In the affidavit filed in support of the vacate application, it is averred that the subject land was put in public auction on 07.01.2005 in which the petitioner had been declared as highest bidder for an amount of Rs.8,450/-for total extent of Ac.2.95 cents of dry land. Whereas earlier to the public auction the then tenant had been paying Rs.12,600/-per annum. The auction proceedings had sent for confirmation of the competent authority. Whereas the competent authority i.e., the Assistant Commissioner of Endowments had vetoed the auction proceedings, through his proceedings R.C.No.A2/686/2005 Admn. Dated 14.02.2005 stating that the bid amount is not satisfactory. As such as per the direction of the Assistant Commissioner of Endowments, Rajahmundry, the 3rd respondent had issued a notice to the petitioner stating these facts.

12. It is also stated that as per Rule 16 of the Rules vide G.O.Ms.No.379 dated 11.03.2004 all leases shall be reported to the competent authority, who may either confirm or for reasons to be recorded in writing, disapprove the lease. As the subject temple is classified as Section 6(1) of the Endowments Act, the Assistant

Commissioner is the competent authority as per Rule 16(a) of the Rules. As such, the plea of the petitioner that the Assistant Commissioner is not competent is not sustainable and tenable. The statute clearly contemplates that the Assistant commissioner of Endowments is the competent authority for the approval of leases of 6 (c) institutions and the 2nd respondent had issued adios in accordance with law.

13. It is stated that the 2nd respondent had vetoed the auction by giving reasons that the bid amount is not satisfactory and the earlier bid amount is more than the present bid amount. Earlier to the auction, the tenant had been paying Rs.12,600/-per annum. Whereas the petitioner had offered only Rs.8,450/-. Therefore, the 2nd respondent had vetoed the auction by mentioning the same.

14. Further, it is stated that unless the lease is approved by the competent authority, the highest bidder cannot claim any sort of right over the auctioned land. Therefore, the petitioner had no right over the subject land as the auction proceedings had been vetoed by the competent authority. It is also stated that without availing the alternative remedy, the writ petitioner approached this Court and hence, the writ petition is liable to be dismissed in limini.

15. These are the respective stands taken by the parties.

16. The order of status quo was made by this Court as specified supra. There is no serious dispute that the writ petitioner had been continuing in possession all along, and it is brought to the notice of this Court that even if the stand taken by the writ petitioner is admitted, the same will come to an end by 15.01.2008. In the light of the peculiar facts and circumstances, this Court did not go into the principal question, which had been argued in elaboration by the respective counsel on record. Inasmuch as it is stated that the period would come

to an end by 15.01.2008, the writ petitioner is permitted to take away any standing crops by that time. It is made clear that the order of status quo granted by this Court would be operative till 15.01.2008 and not beyond thereto.

Accordingly, the Writ Petition is disposed of. No order as to costs.

P.S.NARAYANA,J

Dated:18.12.2007.

sj